Criminal Misc. Application no. 67 of 2003

Ravindra Singh and others------ Applicants

Versus

State of Uttaranchal and others Respondents

Hon'ble M.M. Ghildiyal, J.

By means of this petition under section 482 Cr.P.C. the applicants have prayed to quash the proceedings pending against the applicants in the court of Additional Sessions Judge/II Fast Track Court, Udham Singh Nagar, S.T.No.199 of 2001 State Vs. Yashpal Malik and two others, P.S. Rudrapur, under sections 306/506 I.P.C.

Heard Sri Viresh Misra learned counsel for the applicants, learned A.G.A.and Sri S.S. Yadav learned counsel for respondent no.2.

Brief facts of the case are that there is a housing society in the name and style of Himalaya Sahakari Avas Samiti, Ghaziabad. The applicant no.2 is the Vice-President of the society. The society purchased land for construction of 120 houses. The society published tender for the construction and since the rates of tender submitted by the son of respondent no.2 was the lowest the work of construction was allotted to the son of respondent no.2. Sri Narendra Singh Rathi started proprietorship firm under the name and style of M/s Rathi Builders of which he was the sole proprietor. The said firm started constructions and he realized a sum of Rs. 1.26 crores from the said society. The firm M/s Rathi builders also undertook the construction work of M/s Flex industries. Since the deceased had no aptitude of business and construction work. He went on increasing the liabilities and later on when the entire affairs of M/s Rathi builders went beyond his control he started escaping from his liabilities and left all the incomplete projects and went back to his home town where he started living under great depression and frustration on account of huge losses in business and other financial liabilities. While he was at Rudrapur he was found dead on 13.5.2000. A suicide note has been recovered from the possession of the deceased in which he has stated that he is committing suicide because of the applicants as they incited him for suicide by continuous harassment mentally a well as financial. A vehicle was purchased by the deceased in the name of applicant

no.1. The payment was made to the Finance company by the deceased. The applicants have forcibly taken the; vehicle from the deceased and when the deceased resisted the applicants threatened the deceased of the life of deceased as well as of his family members. They have forced the deceased to sign on blank papers.

On the basis of suicide note the respondent no.2 lodged FIR. The Investigating Officer after registering a case started investigation and recorded the statements of the witnesses under section 161 Cr.P.C. The case was committed to the Court of Session and has been registered as S.T.No. 199 of 2001. The applicants moved application for their discharge. However, the learned Additional Session Judge rejected the application on 11.12.2002 and framed the charges against the applicants.

Learned counsel for the applicants has submitted that the applicants are innocent and no case is made out against the applicants. The car bearing number U.P.14 L 2079 is registered in the name of applicant no. 1 and he is the registered owner and as such no offence pertaining to the said car can be committed. The allegations contrary to this that the car was purchased by the deceased though in the name of applicant no.1 the deceased made the payment and the car was taken forcibly by the applicant no.1 are not correct. Further, whatever objections have been raised regarding defects and irregularities in the construction work made by the deceased, it was by consulting architect for the scheme.

The learned counsel for the applicants has placed reliance on the following judgment:-

(i) (2202) 5 Supreme Court Cases 371 Sanju alias Sanjay Singh Senger Versus State of U.P.

(ii) **JT 2003(1) SC418 Ajay Mitra Vs. State of M.P. & Ors.**

(iii) **1992 Supp(1) Supreme Court Cases 335 State of Haryana and others Versus Bhajan Lal and others.**

Each case has its own facts. The facts of aforesaid cases are quite different of the facts of the present case.

The learned A.G.A. has placed reliance on the judgment of Apex Court, **State of Bihar Vs. Rajendra Agrwalalla, (1996) 8 Supreme Court Cases 164** wherein the Apex Court has held that the inherent powers of the court under section 482 of the Code of Criminal Procedure should be very

sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised.

After investigation the Investigating Officer has submitted the charge sheet and the charges have been framed against the applicants by the learned trial court. The case has been fixed for evidence.

At this stage the court should not interfere under section 482 Cr.P.C. It was further brought to may notice by the learned counsel for the respondent no.2 that the applicants had already filed application under section 482 Cr.P.C. before Hon'ble Allahabad High Court and the Allahabad High Court on 3.7.2000 dismissed the petition. The Apex Court in series of cases has held that the inherent power under section 482 Cr.P.C. should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised.

In view of the above since the investigation has been completed, charge sheet has been submitted and the learned trial court has framed the charges against the applicants, it will not be proper to interfere at this stage under section 482 Cr.P.C. However, it would be proper, in the interest of justice, to direct the Additional Sessions Judge/II Fast Track Court, Udham Singh Nagar to commence the trial on day to day basis and conclude the same preferably within a period of three months.

With these observations the application under section 482 Cr.P.C. is dismissed.

(M.M. Ghildiyal, J.)

August 28, 2003
MPS